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Vol. IV
TRANSCRIPT OF RECORD

(Pages 1489 to 1992)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 228

NYE & NISSEN (A CORPORATION), AND ABRAHAM MONCHARSH, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 17, 1948.

CERTIORARI GRANTED OCTOBER 25, 1948.

No. 11308

United States

Circuit Court of Appeals

For the Ninth Circuit.

NYE & NISSEN, a Corporation, and ABRAHAM MONCHARSH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Ten Volumes

VOLUME IV

Pages 1489 to 1992

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

Rotary Colorprint, 661 Howard Street, San Francisco

(Testimony of Allan Howell.)

Q. On board that day you showed them some butter and cheese that you say came aboard that day? A. Yes.

Q. You showed them some eggs which you say came abord that day? A. Yes.

Q. Did you notice the tops on the cases in which those eggs were? A. No, sir.

Q. Did you know from what company they came from?

A. Well, Nye & Nissen, they supplied us.

Q. Did you see that on the cases? A. No.

Q. You knew that you had received eggs from Nye & Nissen that day, you had received butter, and you had received cheese? A. Yes.

Q. Before you arrived at the port of San Francisco, where was your starting point, where did you start from?

A. Came from San Pedro.

Q. Did you supply the ship at San Pedro?

A. Yes, with perishable stuff, like fruits, and vegetables, and wilk.

Q. Before San Pedro, had you come through the canal from New York?

A. No. We came from Brisbane, Australia.

Q. When was the last time that the ship was fully victualled for a voyage?

A. Between the latter part of January and the first part of February, as far as I can remember.

Q. In April you still had foodstuffs that were part of the original outfitting in a food way for that vessel? A. Yes.

Q. Aboard the ship? A. Yes.

(Testimony of Allan Howell.)

Mr. Faulkner: That is all.

Q. Well, Mr. Howell, you don't know how long any of this merchandise remained on the pier before it was loaded aboard ship, do you of your own knowledge?

A. Well, as far as I know, it could not have been very long, because we were stirring in a hurry that morning, and we had orders about 9:30 or 10:00 o'clock that we were stirring out, and we left the dock at 1:30, so it could not be on the dock very long.

Q. I mean you, personally, don't know how long?

A. Well, I feel pretty safe that no longer than between 10 a. m. and 1:30. [1307]

Mr. Faulkner: May I have that read?

(The record was read.)

Mr. Faulkner: That is all.

Redirect Examination

Mr. Pratt: Q. Mr. Howell, when these stores were delivered on the pier, did you see them there?

A. No, I wasn't on the pier when they came.

Q. You weren't there when they came?

A. No.

Q. Where were you?

A. I was aboard the ship.

Q. When these stores were loaded on the ship what, if anything, did you have to do with ordering where they should be put?

A. It was part of my job, as soon as they came

(Testimony of Allan Howell.)

aboard I had to tell the stewards where they were supposed to go.

Q. What order did you give in disposing of the butter and the cheese?

A. I made room in the box for the new stores, so that when they came aboard we could put them in the right place.

Q. When the butter and eggs were put in the refrigerator, or icebox, or whatever you call it, did you, personally, supervise that? A. Yes.

Mr. Faulkner: Just a moment.

Mr. Pratt: Q. Were you there at the chill box, yourself?

Mr. Faukner: We object to that as not speaking the record. He said the eggs were in the companionway.

Mr. Pratt: I am talking about the cheese and butter.

Mr. Faulkner: But you said butter and eggs.

Mr. Pratt: Well, I misspoke, then.

Mr. Faulkner: All right; that is the point of my objection. You misspeak the record and ask the answer go out that the butter and eggs were put in the cooler.

The Court: It may go out.

Mr. Pratt: Q. When the butter and cheese came aboard, what did you do, as far as disposing of them in storage?

A. I had them stowed where they were supposed to be stored.

Q. Where? A. In the refrigerator.

(Testimony of Allan Howell.)

Q. Did you go personally into the refrigerator and see where they were stored? A. Yes.

Q. Now, as far as the eggs were concerned, did you personally direct where the eggs were to be placed?

A. Well, they were stowed away that night, about six o'clock that night.

Q. But before these men came out there, and when the stores, when the eggs were first placed upon the ship, where did you direct them to be placed?

A. They were delivered right by the No. 4 hatch, so they remained there until we had time to stow them away.

Q. Did you remain there while these gentlemen were on the boat? A. Yes.

Q. That you have spoken about. In regard to such stores as were on the boat remaining from a previous voyage, have you any record of that?

A. I haven't, not with me here, no.

Q. What?

A. I haven't got the records here with me, no. [1309] They are in the company office.

Q. Do you recall what amount of provisions remained on the ship up to the time on April 29th when these stores were brought aboard?

A. Offhand, I couldn't give you the exact amount, no.

Q. Well, whatever they were, were any of these provisions, stores, pointed out to these gentlemen that came aboard?

(Testimony of Allan Howell.)

A. No. They wanted to see the stores that came aboard that day, so I showed them those stores.

Q. Now, the stores that came aboard on that day, are they represented by the description in this invoice which you identified by putting your signature on the back?

A. Yes, sir.

Q. Accompanying this invoice were a number of others, other copies? A. Yes, sir.

Q. What did you do with those other copies?

A. Well, when they came aboard they were signed, and then given back to whoever bring them aboard. Someone delivered them on the ship, then I signed them and returned the back.

Q. And you kept just one copy, did you.

A. Yes, sir.

Q. For your own file?.

A. I had two. I generally keep two.

Q. You kept two? A. Yes.

Q. What did you do with the copy upon which you placed your signature?

A. I signed them for the man who came aboard and inspected the stores that day.

Q. For these FBI agents? A. Yes, sir.

Q. And you turned it over to them?

A. I did, yes, sir.

Mr Pratt: That is all.

Recross Examination

Mr. Faulkner: Q. Did you see and observe what the man who came aboard did with the merchandise you pointed out? A. Yes.

(Testimony of Allair Howell.)

Q. What did they do with the butter?

A. They put it in the refrigerator. [1310]

Q. Is that all they did with it? A. Yes.

Mr. Pratt: I think the witness misunderstands.

Mr. Faulkner: Q. You put the butter in the refrigerator?

A. The man who brought it aboard stored it in the refrigerator.

Q. I beg your pardon?

A. The man who brought the butter aboard.

Q. They put it in the refrigerator?

A. Yes.

Q. When these men, Mr. Johnson, Mr. McGee, and the third man, came aboard, what did they do with the butter?

A. They went down, examined them, looked them over, weighed them.

Q. Did you see them do that? A. Yes, sir.

Q. Did you remain with them all the time?

A. No, sir.

Q. Did you see them do that with the butter?

A. I was there when they were weighing the cheese first, and then I had work to do right away, so I left them down there working in the box down there. I didn't see them all the time, so I couldn't say exactly.

Q. Did you see them examining and weighing the butter?

A. I seen them examine the cheese. That is one thing I seen, and then I left there.

(Testimony of Allan Howell.)

Q. Did you see them make any examination of the eggs?

A. Yes, sir, I saw them opening up the crates on the deck.

Q. How many crates did they open?

A. I couldn't say exactly how many they opened. There were quite a lot of eggs on the deck.

Q. Do you think they opened more than three?

A. I reckon [1311] they did.

Q. What? A. I guess they did.

Q. I don't want you to guess, Mr. Howell. What is your best recollection?

A. Yes, they opened more than three cases.

Q. What is your best recollection of the number that they opened?

A. As far as I can remember, more than twelve cases.

Q. About twelve cases? A. Yes.

Q. Give me your best recollection of everything you saw those men do with those eggs at that time.

A. Well, aboard the ship between the No. 4 and the No. 5 hatch there is a house built right there by that aftermast, called the electrical house. They took the eggs inside there and was examining them.

Q. That is out in the open hatch, isn't it?

A. Yes, between the No. 4 and the No. 5 hatch.

Q. When they were all finished where were the eggs placed?

A. When they were finished they were still left on deck.

Q. They were left on deck? A. Yes.

(Testimony of Allan Howell.)

Q. Were any of them taken? Any of the butter, eggs or cheese taken off the ship by those men?

A. I don't know.

Q. Did you see them take any?

A. No, sir.

Mr. Faulkner: That is all.

Mr. Pratt: That is all.

The Court: Step down. [1312]

PAUL H. DEBES,

called as a witness for the Government; sworn.

The Clerk: Q. Will you state your name?

A. Paul Debes.

Direct Examination

Mr. Pratt: Q. Will you state your name again, please? A. Paul H. Debes.

Q. Paul H. Debes? A. That is right.

Q. That is D-e-b-e-s? A. Correct.

Q. Mr. Debes, where is your home?

A. In Marin County, Woodacre.

Q. Where? A. Woodacre, Marin County.

Q. Here in the neighborhood of San Francisco?

A. Yes.

Q. You are not a native American, are you?

A. No, I am naturalized.

Q. You are what? A. I am naturalized.

Q. You have been naturalized. And you were born where? A. In Alsace-Lorraine.

(Testimony of Paul H. Debes.)

Mr. Faulkner: May I have the last answer read, your Honor?

Mr. Pratt: "Alsace-Lorraine."

Q. Where were you naturalized, Mr. Debes?

A. Here in San Francisco.

Q. In San Francisco. During the year 1944, and up until March of 1945, what was your occupation?

A. I was chief steward on the SS Hawaiian Shipper.

Q. When did you first become chief steward on the Hawaiian [1313] Shipper?

A. In March, 1944.

Q. Where was the boat when you went on her?

A. In San Francisco.

Q. And you remained continuously on the boat as chief steward until when?

A. Until September, 1945.

Q. Have you your own record of your employment on that ship as chief steward?

A. Yes, sir.

Q. Will you produce that, please? Without producing all of these, will you produce the record of your employment as chief steward on the Hawaiian Shipper for the 12th and 13th voyages of that ship?

A. May I have those? This is voyage 13.

Q. This is voyage 13, yes. That is 12?

May these be marked for identification, the one which the witness said represented his employment on voyage 12, which is a certificate of the Depart-

(Testimony of Paul H. Debes.)

ment of Commerce, a certificate of discharge of Paul H. Debes as chief steward, Hawaiian Shipper, from September 18, 1944, to November 28, 1944, and may the other one, which is the certificate of discharge of Paul H. Debes as chief steward, showing his employment as chief steward on the Hawaiian Shipper from December 11, 1944, to March 25, 1945, be marked for identification?

(The documents were thereupon marked U. S. Exhibits 99 and 100 for Identification, respectively.) [1314]

Mr. Pratt: Q. Now, referring to the operations of this boat, do you know what agency, what general agent was operating this boat for the War Shipping Administration?

A. Matson Navigation Company.

Q. Now, as chief steward of this boat, what were your duties with respect to provisions for the crew and passengers?

A. I was responsible for all food stores aboard the vessel.

Q. How large a boat is this Hawaiian Shipper?

A. It carried 1900 troops.

Q. It carried 1900 troops, and what was the size of the crew of the ship?

A. 86 civilian crew.

Q. A civilian crew of 86, and she carried 1900 of the armed forces?

A. Yes. We had a Navy crew of 43, a gun crew.

(Testimony of Paul H. Delges.)

Q. And was this Navy gun crew of 43 included when you said the crew consisted of 86?

A. No, that is just the civilian crew, merchant marine crew.

Q. In feeding the crew, the gun crew, and the troops aboard, under whose supervision was that done? A. Under mine.

Q. So far as the crew is concerned, where were they fed?

A. They were fed from the ship's galley.

Q. From the ship's galley? A. Yes.

Q. And how about the officers of the ship?

Mr. Faulkner: We object to all of this as incompetent, irrelevant and immaterial, your Honor, not binding——

Mr. Pratt: It is merely preliminary, if the Court please. [1315]

Mr. Faulkner: Just a moment. Even so, it is not binding on the defendants how they fed the troops, the time they fed them, and from which galley.

The Court: It is a preliminary question. We will conclude now.

Mr. Faulkner: Exception.

Mr. Pratt: Q. How about the officers of the ship? Where were they fed?

A. Also from the ship's galley.

Q. And how about the troops aboard?

Mr. Faulkner: The same objection, your Honor. It can't be preliminary to an issue in this case, your Honor.

(Testimony of Paul H. Debes.)

Mr. Pratt: Well, it is. It will be very brief, if the Court please.

The Court: Very well, I will allow it.

Mr. Faulkner: Exception.

A. From the troops' galley.

Mr. Pratt: Q. They had their own cooks, did they? A. That's right.

Q. But you furnished the food products, as chief steward? A. All food products.

Q. Do you know what amount of eggs were placed aboard that boat previous to the ship leaving on her thirteenth voyage?

A. We had ten cases——

Mr. Faulkner: Which trip? Voyage 12?

Mr. Pratt: The thirteenth voyage. [1316]

A. We had 10 cases coming aboard for port stores and 400 cases for the trip.

Mr. Pratt: Q. 400 cases for the voyage?

A. For the voyage.

Q. Did those stores come aboard on your requisition? A. Yes.

Q. I direct your attention to the Exhibit 87, which is an invoice of Nye & Nissen for 400 cases of eggs, the date of the invoice being December 5, 1944, in the sum of $7140, and I ask you whether you can identify that as the invoice relating to the delivery of eggs for the 13th voyage.

Mr. Faulkner: Excuse me, your Honor. What is the position of the Government with respect to offering this testimony? Which count?

Mr. Pratt: I am offering this as to the first count of the indictment.

(Testimony of Paul H. Debes.)

Mr. Faulkner: Then it goes in subject to the objection, your Honor, that we made at the recess.

The Court: Very well.

Mr. Faulkner: Without repeating it.

The Court: The objection is overruled.

Mr. Faulkner: Exception.

A. I saw an invoice similar to that aboard the ship.

Mr. Pratt: Q. And when the stores are brought aboard do they come under your observation?

A. They come under my observation, yes. [1317]

Q. Do you recall the incident when 400 cases of eggs came aboard this boat for stores for the 13th voyage? A. Yes.

Mr. Faulkner: Just a moment. You have the witness identify the period of his employment and he is not employed during the period of that.

Mr. Pratt: Then you had better look at the dates.

Mr. Faulkner: December 5th. He shipped on on December 11th, and he left the other voyage on the 28th of November, so he was not working there, according to the record you produced.

Mr. Pratt: Q. Were you on the ship continuously?

A. Yes, sir. Those discharges pertain only to the voyage from the time we leave San Francisco until we arrive back into port, and during the time we sign off and sign on we are on the port payroll, of which we have no record, but the record is with the company.

(Testimony of Paul H. Debes.)

Q. Then you were on this boat continually from the end of the 12th voyage until the 13th voyage started? A. That is correct.

Q. And during that period did you have anything to do with providing stores for the 13th voyage?

The Court: It is 12 o'clock. It is time for adjournment. The jurors may be excused.

(Jurors excused.)

The Court: In the interest of time, the evidence discloses that this invoice was a copy. He did not see the particular [1318] invoice, if I followed his testimony, so if that is available——

Mr. Pratt: They came together. A number of invoices, perhaps a half dozen in number, all came together.

The Court: All right. Did he sign them?

Mr. Pratt: He did not sign this one. I haven't any invoice that he signed.

The Court: My inquiry is to save some time if there is any question about it.

Mr. Faulkner: I make no point of that, if he identifies it.

Mr. Pratt: The original invoice is in the file in evidence.

The Court: The only reason is he said he saw one like that. That is the only reason. I thought if it was available, if there is any question about it, you could get it.

(A recess was taken until two o'clock p.m.)

Afternoon Session, February 7, 1946, 2 p.m.

PAUL H. DEBES,

recalled.

Direct Examination (Resumed)

The Court: You may proceed.

Mr. Pratt: If the Court please, these exhibits for identification which are the certificates of discharge of the witness, I have been told since court adjourned that these men in his situation have to have these with them as part of their records. Therefore, I would like leave of court to entirely withdraw these exhibits.

Mr. Faulkner: That is agreeable.

Mr. Pratt: And return them to the witness.

The Court: Very well.

Mr. Pratt: Q. Mr. Debes, I think the last question I asked you before court adjourned related to your duties in connection with securing supplies, food supplies, for this steam Hawaiian Shipper. What were those duties, as far as either voyage No. 12 or No. 13?

A. My duty was to see the food was correctly stored.

The Court: Raise your voice so all the jurors can hear you.

The Witness: My duties were that I was responsible for the storage of all food and the preparation of the same.

Mr. Pratt: Q. Was it the practice for you to

(Testimony of Paul H. Debes.)

make a requisition [1320] for sufficient food supplies to last for the voyage?

A. That is correct; before we arrived in a port I had to make a requisition for next trip's food.

Q. Before the commencement of this voyage No. 13, were there left on board some supplies, food supplies, that remained from voyage No. 12?

A. Yes.

Q. Have you a record of that fact?

A. Yes, I have.

Q. As far as eggs are concerned, what quantity of eggs remained, as indicated by your record, from voyage No. 12 at the time voyage No. 13 started?

Mr. Faulkner: Before the witness testifies from a record, your Honor, may I see the record?

The Witness: Certainly.

Mr. Faulkner: May I ask the witness a question about this paper, your Honor?

The Court: You may.

Mr. Faulkner: Q. Mr. Debes, isn't this paper a document that shows the quantities supplied during voyage 13 and for voyage 14?

A. Yes. You see, that document shows how much food I had, I received for voyage 13, and at the same time it was also the requisition for voyage 14. That means that is just the two last columns, here, which show you the requisition for voyage 14.

Q. Does it also show the requisitions for voyage 13? A. No, that is on No. 12. [1321]

(Testimony of Paul H. Debes.)

Q. In other words, this shows what remained on hand at the completion of voyage 13 and your requisitions for 14?

A. No. It shows also what we had on hand from voyage 12. What I had from last voyage, this column shows what we had on hand. In other words, it is written in ink what was left from previous voyage.

Mr. Pratt: Q. From voyage what?

A. From voyage 12.

Mr. Faulkner: Q. What is on hand from voyage 12 when you requisition for voyage 14?

A. Yes. That is what we received for voyage 13.

Mr. Pratt: That is what you received for voyage 13? A. Yes.

Mr. Faulkner: This is a requisition for voyage 14? A. Yes, 14.

Q. So you have a residue from 12, what was ordered for 13, and what you proposed to order——

A. For 14.

Q. 14? A. Yes.

Q. Is this prepared by you? A. Yes.

Mr. Pratt: Q. At the end of voyage 12, how many eggs were still on hand on that voyage?

A. Three cases on the ship.

Q. How many cases were required for voyage 13? A. Received 10 cases for port stores.

Q. What is "port stores"?

A. That means for feeding the crew while in port, and 400 cases for voyage 13.

Q. What time would elapse between the end of

(Testimony of Paul H. Debes.)

voyage 12 and [1322] the start of voyage 13, say how many days?

A. We arrived in San Francisco from voyage 12 November 29th, and sailed December 16th on voyage 13.

Q. During that interval, while you were here in port, can you state approximately how many eggs were consumed?

A. That is pretty hard to say, because——

Mr. Faulkner: Well, we object to that as incompetent, irrelevant and immaterial.

Mr. Pratt: It is preliminary, if the Court please.

The Court: He said it is hard to say.

Mr. Pratt: Pardon me?

The Court: The witness said it is hard to say.

The Witness: Maybe one and a half cases a day; it depends on how many men were on board.

Mr. Pratt: Q. Do you know how many crew members were aboard during the stay in port between the 12th and 13th voyages?

Mr. Faulkner: The same objection.

The Court: Overruled.

Mr. Faulkner: Exception.

A. It would be very indefinite. Many of the members usually leave the ship as we are in port, and they usually did not sign on, except a few days before we are ready to sail. During that time there will be only a skeleton crew aboard.

Mr. Pratt: Q. Just a skeleton crew. You say there were [1323] three cases of eggs left from the

(Testimony of Paul H. Debes.)

previous voyage and you received ten cases of eggs for consumption during the stay in port?

A. Yes.

Q. Are you able to state whether, when the voyage No. 13 actually started, whether any of the previous port stores, I mean the previous voyage stores and the 10 cases of port stores were still unused? A. Yes, there were still some unused.

Q. There were some unused. Can you state how many?

A. I would have to take a guess at it.

Q. Well, your best estimate?

A. I would say about four or five cases.

Q. Do you recall the loading of the 400 cases of eggs on the Hawaiian Shipper for the voyage No. 13? A. Yes.

Q. I direct your attention to this Exhibit 75 in evidence, which is a purchase order to Nye & Nissen for 400 cases of eggs, and the date of the invoice being September 14th—that would be for the 12th voyage, would it not?

A. September 14th.

Q. Is that right?

Mr. Faulkner: You were talking about the other one, Mr. Pratt.

Mr. Pratt: Q. I call your attention to Exhibit No. 74 in evidence. I wish you would examine that and see if that purchase order relates to the supplying of eggs for the [1324] thirteenth voyage?

A. Yes.

Mr. Faulkner: Which one is that, Mr. Pratt?

(Testimony of Paul H. Debes.)

Mr. Pratt: That is No. 74.

Q. I now direct your attention to Exhibit No. 87 in evidence, and ask if that is the invoice that relates to the supplying of the 400 cases of eggs for voyage No. 13?

A. It looks like the same invoice I had on board the ship.

Q. When these eggs came to your ship were they received by you?

A. No. There was a Matson checker at the dock to check the food in.

Q. When the eggs were brought on the dock under whose direction were they disposed of on the boat? A. Under mine.

Q. What was done with them?

A. The eggs were stored in the forward port box.

Q. In the forward port what?

A. Port box.

Q. That is a chill box, you call it?

A. A chill box.

Q. Whatever eggs remaining, either from the previous voyage or the port stores were already in that chill box, were they? A. Yes.

Q. Will you describe the chill box on your boat on the Hawaiian Shipper?

A. The chill box is a huge box of 6500 cubic feet storage space, which is grated from the bottom and on the sides there are coils, all around the box.

Q. Coils all around the box?

(Testimony of Paul H. Debes.)

A. The temperature is kept at between 34 and 36 degrees. [1325]

Q. How frequently was that temperature checked? A. Every hour.

Q. Every hour. By whom?

A. By the reefer.

Q. The reever? A. Reefer.

Q. R-e-e-f-e-r?

A. Yes. That is a nautical term for refrigerator man aboard the ship.

Q. Before the voyage No. 13 commenced, what, if anything, was done toward defrosting and cleaning out this large chill box?

A. All boxes were cleaned out every trip.

Q. How were they cleaned?

A. By washing down with soap and water and steam hose afterward.

Q. And defrosted? A. Defrosted, yes.

Q. After being cleaned and defrosted they were again chilled? Can you state whether the box was chilled before or after these new supplies for voyage No. 13 were put in it? A. Yes.

Q. During this voyage, No. 13, will you state the manner in which the box was maintained, the chill box?

A. Would you make yourself a little more explicit? In what way?

Q. Was it kept clean and was it kept at even temperature during the whole time?

A. Yes, it was kept clean and at even temperature at all times.

(Testimony of Paul H. Debes.)

Q. Do you know from what source the eggs for the previous voyage No. 12 were secured?

A. I don't remember that.

Q. Directing your attention to Exhibit No. 86, which is an invoice of Nye & Nissen to the War Shipping Administration covering 400 cases of eggs for delivery to Pier 12, Hawaiian Shipper——

Mr. Faulkner: Voyage 12?

Mr. Pratt: Voyage 12. Can you tell from that the source of such eggs as remained at the end of voyage 12?

Mr. Faulkner: We object to that type of examination by handing the witness a paper that he didn't prepare, and asking him if he can refresh his recollection of something he didn't write?

Mr. Pratt: Q. Did that paper, or a copy of it, ever come to your attention?

A. I most likely had a copy.

Q. You say "most likely." Did you have a copy of the invoice for all receipts of foodstuffs, food items?

A. Yes; I received a copy of every item that came aboard the ship.

Q. Now, I ask you the question whether you can tell from what source the eggs were received which were left over at the end of voyage 12?

A. Nye & Nissen.

Mr. Faulkner: If your Honor please, I don't know if your Honor ruled on my objection, but the witness is not permitted to take a paper at any time unless he prepared it himself, to refresh his

(Testimony of Paul H. Debes.)

recollection. He had no recollection of where the eggs came from. He is handed a paper. He did not prepare that paper, and he now says they came from Nye & Nissen. I submit that is not competent testimony.

The Court: I will allow the record to stand.

Mr. Faulkner: Exception.

Mr. Pratt: Q. After this voyage No. 13 started—— [1327]

Mr. Faulkner: May I clear the record? What exhibit did you show the witness just now?

Mr. Pratt: 86. I withdraw this question.

Q. In other words, in your official duties as the chief steward of that steamer, and calling your attention now to voyage 13, that started early in December of 1944, I will ask you how the eggs were disposed of by you as chief steward, as far as assigning them or delivering them to the galley or to the baker, or to the troop galley?

A. We had three different departments which used the eggs which were——

The Court: Raise your voice.

A. We had three different departments that used the eggs, the bake shop, the crew galley, and the troop galley. Those eggs were requisitioned by them on requisition blanks signed by me. After that they took them down to the storekeeper.

Mr. Pratt: Q. The storekeeper had charge of the chill box, did he? A. Yes.

Q. How often in a day was this chill box opened?

(Testimony of Paul H. Debes.)

A. The chill box was opened once in the morning and once in the afternoon.

Q. And no other time?

A. No other time.

Q. During the course of voyage E3 did you have any occasion to examine, personally, any of the eggs that were stored there in the chill box as you have described?

A. Yes. My attention was called to the eggs by the baker, and also the chief cook.

Q. The name of the baker was what?

A. Sture Oscarsson. [1328]

Q. Sture is his first name? A. Yes.

Q. Sture Oscarsson. The chief cook, what was his name? A. Thomas Dolyn.

Q. How do you spell that name?

A. D-o-l-y-n.

Q. You say your attention was called to some of these eggs? A. Yes.

Q. First by whom?

A. By the chief baker.

Q. What did you then do when he called your attention to some of the eggs?

Mr. Faulkner: We object to all this as hearsay as to the defendants and not within the issues in this case, your Honor, and not binding on the defendants at all.

The Court: Overruled.

Mr. Faulkner: Exception. Incompetent, irrelevant, immaterial.

Mr. Pratt: Will you read the question?

(Testimony of Paul H. Debes.)

(Question read by the reporter.)

A. I went down to the bake shop and checked the eggs myself.

Mr. Pratt: Q. In what containers were the eggs when you examined them in the bake shop?

A. They were still in the packing boxes.

Q. In the cases? A. A case, yes.

Q. How many cases were there?

A. There was one there.

Q. One case of eggs. What examination did you make of those eggs?

A. I broke open several of them. [1329]

Q. When was this with relation to the start of this voyage?

A. It was right after the beginning of the voyage, maybe a day or two after we had left port.

Q. What did you observe as to these eggs that you broke and otherwise examined?

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial, and not within the issues of this case. In that respect, your Honor, the record shows that the method of selling eggs is by inspection. In other words, a person handling eggs buys eggs or receives eggs and they are tendered for inspection, and they are passed by an inspector. Nobody knows the quality of those eggs, nobody in the world. If there was an impeding of the inspection service, that is the issue in this case. The quality of the eggs after they are opened is not one of the issues involved in this case, your Honor. I respectfully submit that it is incompe-

(Testimony of Paul H. Debes.)

tent, irrelevant, and immaterial. It does not enter into the issues here, because that is not the basis of the sale of eggs. It is not the basis of the regulations. It is not the basis of the ordering or delivering of eggs; what subsequently happens to the eggs which are perishable would be merely evidence prejudicial to the defendants, and would not tend to prove any issue in this case.

Mr. Pratt: The indictment in this case charges, in the first count, a conspiracy to defraud the United States. The [1330] basis of the fraud in many instances, although there are numerous specifications of fraud in this first count—one of the bases of fraud is the invoice which is submitted by the defendants to the Government, and in this question an invoice was submitted and paid by the Government for 400 cases of eggs, Large, Processed, Procurement 1. That means a very high grade of egg, and it is certainly competent to say by this witness and by subsequent witnesses that the eggs within a day or two after they appeared on this boat were rotten, not only that, but were short in amounts, in quantity, and it seems to me there cannot be the slightest doubt but what the fraudulent transactions which will be established by these witnesses come directly within the description in the indictment.

Mr. Faulkner: Your Honor, that is not the method of the conduct of the egg business as depicted in this record. To illustrate, the firm of Nye & Nissen receives, we will say, a carload of eggs from the Midwest, and pay for them as a cer-

(Testimony of Paul H. Debes.)

tain type egg. Subsequently, they are passed by an Army inspector after he inspects 5 per cent of those eggs, and those eggs are then tendered to Matson Navigation Company, or any other person, as eggs fitting that order, an order on that basis. That is the method that is shown in this record of filling orders. That would mean that 95 per cent of those eggs have never been examined by anyone in the firm of Nye & Nissen, or any other person.

Now, the eggs go on board of a ship, or anything else, and maybe a week, three days, five days, or any period of time elapses, and it will appear from this testimony that some of those eggs were not good. In the inspection certificate and in the rules and regulations, your Honor, it is provided clearly substantially as follows: It is provided in a certain type egg, for instance, under these regulations, that there shall be so many A eggs, we will say 80 per cent A eggs. Now, when the egg comes in to that firm, any firm, and they are tendered for inspection, it is determined they meet a percentage of 80 per cent; this is Procurement 1, which is the equivalent of an A egg; 80 per cent of those eggs therefore should be Grade A eggs, and there may be 20 per cent which may be of other grades, including Checks, including Bloodspots, and so on. That is the only way that business can be conducted. If the eggs pass the Army inspector, pass the Department of Agriculture inspector, and there is nothing wrong with the eggs, then Nye & Nissen may be at fault if they knew it, but there isn't anything in

(Testimony of Paul H. Debes.)

the egg business requiring them to examine those eggs. The only way you know the quality of the egg is when you break it. These things have been created by the relations of a vendor and vendee, and when they are delivered that ends it.

It would be highly desirable, I know, to have a lot of bad eggs in this case, but that is not this case. The charge [1332] is we defrauded the United States by impeding inspection service. That is the precise charge in count 1 to which this testimony is addressed. Your Honor will recall this is one of the instances that do not relate to substantive offenses. In other words, the charge is to defraud the United States, it is not to defraud the United States by the presentation of a false claim, because if that was the charge they wouldn't be in court, but they are in court on the theory that Nye & Nissen defrauded the United States by impeding the inspection service and switching eggs on these inspections. We respectfully submit there has been no foundation for the introduction of this testimony on any question in the direct examination. There is no charge in the conspiracy count that he presented false claims. That was very particularly eliminated in the preparation of this indictment. [1333]

Mr. Pratt: Now, if the Court please, this indictment in its first count is much broader than has been indicated by counsel. Your Honor will note in the descriptive matter describing the plan and conspiracy, for example, on the 5th page under

(Testimony of Paul H. Debes.)

paragraph 1, "The defendants and said co-conspirator would misrepresent the grade, weight and price of eggs delivered to the War Department and the United States of America War Shipping Administration." When they filed this invoice for 400 cases of eggs, Large Procurement 1, they committed a fraudulent act by misrepresenting the grade and price of the eggs which they delivered to the War Department and to the United States. That is the claim made in connection with this witness' testimony, and it is based specifically and directly upon the allegations of the indictment.

Mr. Faulkner: If your Honor please, your Honor will recall that when Mr. Kirschbaum was on the witness stand, when he identified Purchase Order No. 75, he testified that accompanying that purchase order was an inspection certificate for those eggs from the Department of Agriculture, and the Government has those inspection certificates and have never produced them.

Mr. Pratt: Is it possible that counsel claims that because there was an inspection certificate his client is relieved from a fraudulent transaction as evidenced by the testimony of this witness as it will appear?

Mr. Faulkner: If your Honor please, the eggs are bought [1334] in the regular course of business by trainload after trainload in the same way that they are sold. Nye and Nissen do not break the eggs first and sell them afterwards. They are not charged with presenting a false invoice. It all re-

(Testimony of Paul H. Debes.)

lates to "by grading, weighing, packing, selling and delivering to the United States of America."

The Court: "The eggs were not of the quality as represented by the defendants."

Mr. Faulkner: Pardon me?

The Court: It is alleged here that the eggs were not of a quality as represented by the defendants.

Mr. Faulkner: Which citation is that?

The Court: Specification F on page 5. In any event the court is prepared to rule. You may read the question.

Mr. Faulkner: Before your Honor rules, subdivision F is a particular situation that involves quantity of eggs being presented to the Government and being rejected by the Government. It involves a rejection of eggs. There is no rejection involved in this testimony. That is where you have presented eggs to an inspector and they have been rejected, and we have no such showing here.

The Court: Reframe your question.

Mr. Pratt: Q. You say you were called to the galley by Mr. Oscarsson and there examined a case of eggs. Will you state to the Jury just how you examined them and what you found? [1335]

Mr. Faulkner: The same objection that was argued to the Court a moment ago.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. You may answer.

A. I took several of the eggs and broke them open into a bowl, and what I found was that the

(Testimony of Paul H. Debes.)

whites were watery. They did not hold together. Also the yellows were discolored to a certain extent and had a strong odor.

Q. How many of the eggs in this case did you examine, Mr. Debes?

A. I would say about a dozen.

Q. About what? A. About a dozen.

Q. On any other occasion did you examine eggs that came from your chill box on this voyage No. 13? A. Yes.

Q. When was the next time?

A. Chief Cook Thomas Tolyn called me into the galley to examine eggs there, too.

Q. What eggs did you examine there? How many eggs were there?

Mr. Faulkner: May I have the question and answer read?

(Record read.)

Mr. Faulkner: We ask for the time, your Honor.

The Court: Fix the time.

Mr. Pratt: Q. When was that?

A. Maybe a day or two later.

Q. You went to the galley, did you?

A. Yes.

Q. How many cases of eggs did you find there?

A. About three. [1336]

Q. Three cases, and what examination did you make of those eggs?

A. I broke some into a bowl as before of the three cases and I found the same result.

Q. And what was that result?

(Testimony of Paul H. Debes.)

Mr. Faulkner: The same objection as made before, your Honor.

The Court: The objection will be overruled. He may answer.

Mr. Faulkner: Exception, and upon the further ground that the condition of the eggs at the time of this incident has no relation whatever, according to the foundation laid by the testimony introduced by the Government itself, to the condition of the eggs at the time of inspection. Eggs may be inspected within twenty-one days of the date of delivery, your Honor.

The Court: It goes to the weight of the testimony. I will allow it. The objection may be overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. What did you find with regard to these eggs?

A. The eggs were, when I broke the eggs open, the whites were watery. When the boys tried to fry them in the pan the spattered all over. They wouldn't hold together, and the yolks were discolored, some of them, and they had a strong odor.

Q. How many eggs did you examine by breaking on that occasion?

A. I would say about a dozen and a half.

Q. What proportion of those eggs were of the character that you have described?

A. I would say about 12, 13. [1337]

Q. Out of a dozen and a half, and you have

(Testimony of Paul H. Debes.)

stated what, if any, odor there was from these eggs?

A. More on the sulphur type.

Mr. Faulkner: What is it?

The Court: "More on the sulphur type."

Mr. Pratt: Q. Sulphur odor. Did you on any later occasion examine any eggs on that Voyage No. 13?

A. No, I didn't, although I had the same complaints always.

Q. In examining the eggs that you spoke of, first for the baker and second for the chief cook, did you find that the cases that you examined were full?

A. No, some of the cases were not full.

Q. Will you explain what you mean by that?

A. I was told by the chief baker——

Q. No, no, not what you were told, Mr. Debes; what did you observe?

A. Several layers were missing.

Q. Several layers were missing, and will you describe how that was?

A. On those occasions when I was down in the galley, in fact it was pointed out to me that the eggs had two layers missing, and they showed me how they were packed. The top layers were full, and you lifted up the gratings between it, and you found two layers were empty. The cases looked perfectly full in the beginning.

Q. These cases that you examined, first the single case in the bakeshop, are you able to state

(Testimony of Paul H. Debes.)

how many eggs were missing entirely from that crate?

A. Two layers. That means six [1338]dozen.

Q. Six dozen missing from that case, and in the case of the three cases of eggs that you spoke about which you examined in the galley, how many eggs of those three cases were missing, if you know?

A. There was a layer missing in each case.

Q. And how many eggs in a layer?

A. Three dozen.

Q. In your experience on that ship on Voyage No. 13, did you on any occasion order eggs for your breakfast or any other meal?

Mr. Faulkner: Same objection, your Honor, incompetent, irrelavent, immaterial and hearsay as to the defendants, and not on of the issues in this case.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

A. Yes, I did.

Mr. Pratt: Q. How soon after the voyage started did you order eggs for breakfast?

A. The first day and the second day out.

Q. State what you observed or tasted in regard to those eggs?

Mr. Faulkner: Same objection, your Honor.

The Court: The objection is overruled.

A. The eggs were very bad. You hardly could eat them.

Mr. Pratt: Q. Were you able to eat them?

A. Well, I finally did eat them.

(Testimony of Paul H. Debes.)

Q. Did you on subsequent occasions order eggs for breakfast? [1339]

A. Yes, I did.

Q. What experience did you have with them?

A. I found the same exeprience.

Q. Were you able to eat the eggs?

A. No, I finally gave up.

Q. I want to ask you again with regard to this chill box and the manner in which eggs were packed or stored in the chill box, will you describe how the eggs were arranged in the chill box?

A. The eggs were stored seven boxes in a row and then on top of each other——

Q. Seven boxes high?

A. No, seven boxes wide and nine high. That would be between each layer there was dunnage.

Q. You mean between each case of eggs——

A. Yes.

Q. There was dunnage? A. Dunnage, yes.

Q. What does that mean?

A. That is a wooden strip just like a lath. It is about five-eighths of an inch thick and an inch wide.

Q. What is the purpose of that?

A. For air circulation around the eggs.

Q. Did the lowest cases of eggs rest immediatey on the floor? A. No, on a ..ating.

Q. On a grating? A. Yes.

Q. So there was circulation of air all around all of the cases, is that right? A. Yes.

(Testimony of Paul H. Debes.)

Q. And was it maintained in that way during the entire trip? A. Yes. [1340]

Q. Now, referring to the cases in which there were empty layers, were these cases closed when you went into the galley or into the bakery?

A. No, they had been opened already.

Q. And the top was off? A. Yes.

Q. And otherwise were the cases full of eggs?

A. Yes.

Mr. Pratt: I think you may cross-examine.

Cross Examination

Mr. Faulkner: Q. Mr. Debes, as I understand the cases of eggs which you have been referring to were on what voyage? A. Voyage 13.

Q. You have a paper there that you testified from. I will ask that it be marked for identification.

A. Can I get that back with my files, please?

Mr. Faulkner: I submit, your Honor, the witness used it to refresh his recollection, and it should be a part of the file, but if it is possible to return it to him I have no objection, but I wouldn't like to be asked the question now.

The Court: It may be marked for the purpose of identification.

(The document was thereupon marked Defendants' Exhibit W for Identification.)

Mr. Faulkner: We will work this out so the witness won't be inconvenienced.

Q. Do you recall when that ship left San Francisco on Voyage 13? — A. December 16. [1341]

(Testimony of Paul H. Debes.)

Q. September 16? A. December 16.

Q. December 16—is that correct?

A. According to the book, yes.

Q. And the incident that you have referred related to a few days after the voyage, is that correct? A. Correct.

Q. Do you recall the incident of the loading of a ship with a quantity of eggs from Nye and Nissen? A. Yes.

Q. Were you present when they were brought down to the dock?

A. I was not on the dock, no sir.

Q. Do you know how long they remained on the dock? A. I couldn't tell you.

Q. Do you know, Mr. Debes, when the eggs were inspected in the pant of Nye and Nissen?

A. No, I do not.

Q. Do you know when the eggs were ordered from the firm of Nye and Nissen?

A. No, I do not.

Q. How many days before the voyage started were those eggs placed on board the ship Hawaiian Shipper?

A. I imagine they were aboard about four or five days. The ship was loaded with food stores before we started to load cargo and troops.

Q. So that if the eggs were put aboard the ship four or five days before the voyage started and were delivered on the waterfront on the 5th of December, then they would have remained on the pier for a period of five or six days and then

(Testimony of Paul H. Debes.)

remained on the ship for a period of five or six days before the voyage started, is that right?

A. That is possible, yes. [1342]

Q. When this voyage had finished what foodstuffs were in the ice box or in the cool place on that ship where eggs are stored when your voyage ended, Voyage 12, in respect to other merchandise than eggs?

A. Probably some oranges and grapefruit, lettuce.

Q. And how long had those materials been in that ice box? A. During the whole trip.

Q. And how long was the trip?

A. Trip No. 12?

Q. Yes.

A. I imagine it was about two, two and a half months. I can't recollect exactly.

Q. So that there were quantities of fruits and vegetables in the same storage box that the eggs were placed from a preceding voyage, isn't that right? A. That is right.

Q. Now then, some time all those articles were taken out and the ice box cleaned out, is that right? A. That is correct.

Q. And then they were put back in; that is correct, is it not? A. Right.

Q. Then in addition to the old fruits and vegetables you also placed in other fruits and vegetables for the purposes of Voyage 13, did you not?

A. That is right.

Q. What did they consist of?

(Testimony of Paul H. Debes.)

A. They consisted of fruit, grapefruit, apples, oranges, pears, lettuce, cabbage, celery, carrots.

Q. All in the same room where the eggs were?

A. That is right.

Q. Did you observe the cases in which these eggs came? [1343]

A. What cases are you speaking of?

Q. Voyage 13? A. Voyage 13?

Q. Yes. A. Yes.

Q. What kind of cases were they?

A. They were wooden crates.

Q. Did you observe anything else about them?

A. Not particularly, no.

Q. Did you observe any labels on them?

A. Yes.

Q. What kind of labels?

A. I don't remember exactly. I imagine it was a Nye and Nissen label.

Q. I do not mean what you imagine, Mr. Debes, do you know?

A. Not for sure. I wouldn't say anything definite.

Q. Not for sure?

A. No, I am not sure about that.

Q. When your Voyage 12 ended you had, I think you testified, three cases of eggs that were on the ship from the preceding voyage, Voyage 12, is that correct? A. That is right.

Q. Where were those eggs kept?

A. In the chill box.

Q. In the chill box? A. Yes.

(Testimony of Paul H. Debes.)

Q. In addition to that you ordered ten cases of eggs for port feeding, did you not?

A. That is right.

Q. Who did your order them from?

A. I don't recall from whom they came.

Q. So in all you had three cases of eggs that had been on a voyage for several months and you had ten cases of eggs that had been ordered for port feeding, and they were all in the chill box, is that correct? A. That is right. [1344]

Q. When you examined a case of eggs in the presence of a baker, they were in the galley, is that correct? A. That is right.

Q. And they were in a box? A. Right.

Q. And you broke some of those eggs?

A. That is right.

Q. And they were not very good?

A. No.

Q. They were watery? A. That is right.

Q. Now, which incident occurred first? The breaking of eggs that came out of one case or the breaking of eggs that came out of three cases?

A. The one case first.

Q. Now then, what day would you say that was in respect to the time your ship had left San Francisco?

A. I would say about two or three days out at sea.

Q. You were two or three days out at sea? Could it have been longer?

(Testimony of Paul H. Debes.)

A. No—it could have been the fourth day, but not any longer.

Q. It could have been the fourth day?

A. Yes.

Q. And the baker was using some of the eggs, is that correct? A. Yes.

Q. And you had examined that case of eggs, is that correct? A. That is correct.

Q. When you came into the galley, the case was open, was it not? A. That is correct.

Q. Am I correct in that? A. Yes.

Q. And you observed, I think you said, about a dozen and a half, [1345] was it, or about a dozen eggs—about how many eggs did you open on that occasion? A. About a dozen.

Q. Did you observe what type of eggs they were?

A. What do you mean by type?

Q. Were they white eggs?

A. Yes, white eggs.

Q. Were they large eggs? A. Yes.

Q. Were they mouldy?

A. I didn't see no mould on them, no.

Q. Were they moist? A. No.

Q. In other words, Mr. Debes, before you opened the eggs, as you observed them there in the case, was there any condition observable to you that would indicate that they were not eggs of good quality? A. No.

Q. And it was not until you broke five eggs that you found they were not the type that you

(Testimony of Paul H. Debes.)

like to enjoy every morning for breakfast, is that right? A. That is it.

Q. The whites were watery?

A. The whites were watery.

Q. What else did you observe in relation to the eggs in the baker's galley?

A. The yolk was discolored. It wasn't as light in color as it should have been.

Q. Debes, in the matter of eggs, in California the people like a light yolk egg and in the eastern states they like a deep-colored egg. Which was that?

A. More of a deep-colored egg.

Q. In other words, the white was kind of watery and the yolk seemed darker than you would like for your taste?

A. That is right [1346]

Q. After you broke the dozen eggs, what did you do with the case of eggs?

A. I let the baker use it.

Q. What? A. I let the baker use it.

Q. Then how long after that did you have another incident relating to eggs?

A. Probably a day or two afterwards from the chief cook.

Q. Well, could it be longer? A. Possibly.

Q. Could it be three of four days later?

A. No, I don't think so.

Q. Well, a few days. Then that would be anywhere from four to six or seven days at sea, is that right?

(Testimony of Paul H. Debes.)

A. Just about, yes.

Q. This time it was the cook? A. Yes.

Q. Is that right? Now then, this was the first complaint of the cook? A. That is correct.

Q. And you were out at sea four to six or seven days and you came down and you saw three cases of eggs? A. That is right.

Q. And they had been opened?

A. They had been opened.

Q. You were not there, in other words, when any of these cases were opened? A. No.

Q. Did you observe those cases? A. Yes.

Q. Did you observe what type of eggs they were according to any label on them?

A. They were white, white eggs.

Q. I mean according to labels?

A. No; I couldn't say specifically. [1347]

Q. You did not observe the labels?

A. No.

Q. But when you had the cases open, as you looked at them, did they have any appearance at all that would indicate to you from your handling the eggs that they were not eggs of good quality?

A. Not from the outside looks of them.

Q. So it was not until you broke the eggs that you discovered that the whites were watery?

A. That is right.

Q. And they had an odor?

A. That is right.

Q. Was there any mould on the eggs?

A. I didn't see any.

(Testimony of Paul H. Debes.)

Q. Did you observe the condition of the fillers?

A. The fillers were—the ones I looked at were dry.

Q. Was the case dry?

A. The case was dry.

Q. Did you examine it particularly for that?

A. Not particularly, no.

Q. In other words, you know that if the fillers were moist all that the eggs would deteriorate right away, isn't that correct? A. Yes.

Q. You also know that if the temperature of that ice box was not maintained properly the eggs would deteriorate rapidly?

A. That is right.

Q. How rapidly would they deteriorate, would you know?

A. No, I do not.

Q. They change very fast, do they not?

A. I couldn't say that. I am not an expert on that.

Q. What else did you observe wrong with those eggs? You described the odor, the yolks—were they pretty deep colored, [1348] too?

A. Yes.

Q. And the whites were watery?

A. The whites were watery.

Q. What else?

A. When the boys put them in the pan they ran all over. They stuck to the pan. They couldn't get them out after they were fried. That is usually

(Testimony of Paul H. Debes.)

the case when the egg is not fresh, when you get them in a condition like that?

Q. What was done with those three cases?

A. They were used up, made the best use of.

Q. You sampled about eighteen of those eggs?

A. Yes.

Q. Out of 90 dozen, is that correct?

A. That is right.

Q. And did you take them out of each case?

A. Yes, we took out a few of each.

Q. How many did you take out of each case?

A. I couldn't count them now. I couldn't say for sure if I took six out of one, five out of another, three out of another.

Q. In this whole voyage are those four cases the only cases of eggs that you personally examined? A. Yes.

Q. And that voyage lasted how long?

A. I imagine it was three and a half or close to four months.

Q. Did you use the eggs that you had on board approximately throughout the voyage?

A. That is all we had aboard. We had to use them.

Q. I mean you did use them? A. Yes.

Q. Now, Mr. Debes, on the occasion of this 13th voyage did I understand you to say that you were also on the 12th voyage? [1339]

A. I beg your pardon?

Q. You were also on the 12th voyage of this vessel? A. That is right.

(Testimony of Paul H. Debes.)

Q. Am I correct in that? A. Yes.

Q. And you had received a quantity of eggs some months before the commencement of Voyage 13, is that correct? A. That is right.

Q. Did you examine any of those eggs on Voyage 12? A. No, I had no complaints.

Q. In other words, on Voyage 12 the eggs that were used by your ship were identical in quantity as those ordered for Voyage 13, were they not?

A. With the exception of taste.

Q. Pardon me?

A. With the exception of taste.

Q. With the exception of what?

A. Of the taste of the egg.

Q. No, I mean you had 400 cases of eggs for Voyage 12? A. That is right.

Q. And you got another 400 cases of eggs for Voyage 13? A. That is right.

Q. And you got the same type of eggs on both instances, according to the purchase order, isn't that correct?

A. The same type at all times.

Q. And there was no complaint of the 400 cases on the first voyage? A. No.

Q. How long have you been with the Matson Navigation Company?

A. I have been with the Matson Navigation Company three years [1350] now.

Q. How many? A. Three years.

Q. That would be 1943? A. About 1942.

(Testimony of Paul H. Debes.)

Q. And would you always be on the Hawaiian Shipper?

A. No, I was on the Monterey before.

Q. Mr. Debes, do you mind showing me the page where you saw that about the eggs here?

A. Page No. 5 (handing a document to Mr. Faulkner).

Q. In addition to the 400 cases of eggs ordered for Voyage 13 and 10 cases for ship stores and 3 cases from the prior voyage, you also had in addition to that, 50 other cases of eggs on board, didn't you? A. Yes.

Q. Where did they come from?

A. They came from the SS. Monterey.

Q. From what?

A. The SS. Monterey. I took them aboard in the Bay of Leyte.

Q. In what?

A. In the Philippine Islands, transferred stock there.

Q. That is coming home or going out?

A. Coming home.

Q. Coming home on Voyage 12?

A. On Voyage 13.

Mr. Pratt: Q. Voyage 13, did your say?

A. Yes.

Mr. Faulkner: Q. In other words, they were not on board down here at Pier—— A. No.

Q. The Matson pier is 30-32; is that where you were then? A. That is right.

Q. Your ship was there. Mr. Debes, isn't the

(Testimony of Paul H. Debes.)

voyage "Leyte"— [1351] isn't that where you have the one case of eggs? You have the word "Leyte" and under it you have "1"?

A. Oh yes, that is the one case we sold, I think, to an officers' club. I don't remember. All of those figures are eggs that have been transferred or sold.

Q. In other words, the eggs you had on board that ship at the outset of the voyage, Voyage 13, you sold some of those eggs to the officers out there at Leyte, is that right? A. Right.

Q. And those were eggs that were part of the 300 cases of eggs you got from Nye and Nissen?

A. I sold one case.

Q. Well, whether it was one or ninety-one, you sold them some of those eggs, is that right?

A. That is right.

Q. What does it say here above the column? Is that also the word Leyte?

A. That is Leyte, yes.

Q. What is that word? A. Hollandia.

Q. You did not get any eggs there, did you?

A. No.

Q. That means a receipt at that point, is that right?

A. That is a receipt at that point.

Q. Mr. Debes, were you on the ship for Voyage 14? A. Yes.

Q. When did that voyage start?

A. April 1 to May 28.

Q. Can you tell me how many cases of eggs were

(Testimony of Paul H. Debes.)

left on at the conclusion of Voyage 13 from your record? A. I think ten.

Q. I mean if you have the record.

A. Yes, 10 cases.

Q. So that of the 462 cases, or, rather 463 cases, one case was sold at Leyte and when you got finished with Voyage 13 [1352] there remained 10 cases of eggs left, am I correct on that?

A. That is correct.

Q. Did you then revictual for eggs on Voyage 14? A. I beg your pardon?

Q. Did you revictual the ship for eggs for Voyage 14? A. Yes.

Q. Do you know the quantity?

A. I ordered 450 cases.

Q. Do you know who you received them from?

A. No, I don't remember.

Q. You don't remember? A. No.

Q. Do you remember where the eggs were stored? A. In the same box.

Q. Were the eggs all right? A. Yes.

Q. On Voyage 14 the eggs were all right?

A. Yes.

Q. Can you tell me the date that you got the eggs for Voyage 14 from this?

A. No, I can't tell you from this.

Q. Can you tell me from your discharge certificates about the time that Voyage 14 started?

A. April 3.

Q. April 1? A. April 3.

Q. Is that 1945?

(Testimony of Paul H. Debes.)

A. Yes, and we came back May 28, 1945.

Mr. Faulkner: Will your Honor indulge me a moment?

The Court: I will excuse the Jury for a few minutes.

(Recess.) [1353]

Mr. Faulkner: I ask Mr. Pratt at this time for the inspection certificate that accompanied Exhibit U. S. 74 when it was brought to the Government officers by the Matson people.

Mr. Pratt: 74. I think that is the certificate. Perhaps that can be repaired. Have you some Scotch tape there? I would like the record to show that the Government has produced for Mr. Faulkner the inspection certificate of the eggs that went on the Hawaiian Shipper for the thirteenth voyage, the inspection certificate being dated December 4, 1944, and December 5, 1944, there were two dates.

Mr. Faulkner: It wouldn't appear to be, Mr. Pratt. This says, "Turkeys" down here, 289 plus 30; that would be 319 cases.

Mr. Pratt: This certificate seems to cover the inspection of 319 cases of eggs.

Mr. Faulkner: We will mark it Defendants' Exhibit for Identification, your Honor. May I have the inspection certificate for Voyage 12, Mr. Pratt? We will ask this be marked for identification, your Honor.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit X for Identification.)

(Testimony of Paul H. Debes.)

Mr. Pratt: The Government has produced at the request of counsel for the defendants inspection certificate for delivery to Hawaiian Shipper dated September 15, 1944, for [1354] 400 cases of eggs relating to the 13th voyage; the Government also produces another certificate for 111 cases of eggs. Now, there is a reference to the purchase order number here.

Mr. Faulkner: We will mark this for identification. One is X. Let the other be X-1 for Identification and clamp them together and we can straighten them out later, your Honor.

(The document was marked Defendants' Exhibit X-1 for Identification.)

Mr. Pratt: This is a copy of the one that we repaired.

Mr. Faulkner: That is a copy of this, isn't it?

Mr. Pratt: Yes.

Mr. Hippelli: These numbers identify them, up here.

Mr. Faulkner: 2813.

Mr. Pratt: 2813.

The Court: You have wasted ten minutes trying to pursue a document here, gentlemen. The jury is sitting here patiently. If there are any documents to be produced let them all be made available so you can examine any and all of them. This case ought to proceed.

Mr. Faulkner: May the inspection certificates relating to Voyage 12 of the Hawaiian Shipper be marked Defendants' Exhibits Y and Y-1?

(Testimony of Paul H. Debes.)

The Court: Admitted and marked.

(The documents were marked, respectively, Defendants' Exhibit Y and Y-1 for Identification.) [1355]

Mr. Faulkner: That is all, Mr. Debes.

Redirect Examination

Mr. Pratt: Q. At the commencement of this voyage No. 13 you have already stated that there were some eggs which you had on hand, namely 3 cases from the previous voyage, and 10 remaining from port stores used while the ship was in port. When the eggs that came on, these 400 cases, are you able to state which eggs were used first?

A. The old eggs; that means the eggs that were left aboard the ship from the previous voyage and the port stores eggs.

Q. Those were used first? A. Yes.

Q. As soon as the troops came on board, that was at the start of the voyage, I suppose?

A. Yes.

Q. Are you able to state approximately how many cases of eggs were used a day at the start?

A. Between 10 and 12.

Q. Between 10 and 12 each day?

A. Each day.

Q. You spoke of taking the 50 cases of eggs in the Philippines at Leyte from the steamship Monterey. A. That's right.

Q. Why did you take the 50 cases?

A. We were running short on eggs.

(Testimony of Paul H. Debes.)

Q. You were running short on eggs. Of these 50 cases that were taken on at Leyte, what remained at the end of the voyage were of those eggs, were they?

A. Yes.

Q. These eggs taken on at Leyte were packed how?

A. They were packed in cardboard fiber boxes.

Q. Fiber boxes, and the other cases that were taken on at the commencement of the voyage were in wooden boxes, wooden cases?

A. That's right.

Q. You mentioned the fact in answer to Mr. Faulkner that during the Voyage No. 12 there were no complaints of the quality of the eggs?

A. That's right.

Q. What, if any, complaints did you have in regard to the eggs on Voyage 13?

A. I had complaints not only from the chief cook, the chief baker, but also from the crew. They came to me and told me that the eggs tasted strong, they were bad, and also from the troops.

Mr. Pratt: That is all.

Mr. Faulkner: That is all.

STURE OSCARSSON,

called as a witness for the Government; sworn.

Direct Examination

Mr. Pratt: Q. Will you state your name, please, to the court and jury?

A. My name is Sture Oscarsson.

(Testimony of Sture Oscarsson.)

Q. Your first name? A. S-t-u-r-e.

Q. S-t-u-r-e? A. Yes.

Q. Oscarsson. Mr. Oscarsson, where do you reside?

A. I live in 144 Eddy Street.

Q. What? A. 144 Eddy Street.

Q. Whereabouts? A. 144 Eddy. [1357]

The Court: 144 Eddy Street, San Francisco?

A. Yes, San Francisco.

Mr. Pratt: Q. What is your occupation.

A. I sail as cook and baker on ships.

The Court: Sit back in your chair and be comfortable. This gentleman is here to take down every word that you say. If you want to help him, speak loudly so he will be able to hear you. All these jurors want to hear what you say.

Mr. Pratt: Q. Mr. Oscarsson, where were you born? A. In Sweden.

Q. In Sweden? How long have you been in this country? A. 1922.

Q. How long have you been at sea?

A. I went to sea in 1912, the 12th of April, the first time.

Q. So you have been at sea for 33, 34, or 35 years? A. 32 years, 33 years.

Q. During all of that period have you been a cook or baker on steamers on the seven seas?

A. Yes.

Q. During the year 1944 and the early part of 1945, on what boat were you employed?

A. I was employed on the Hawaiian Shipper

(Testimony of Sture Oscarsson.)

from, I think it was, December 18, 1943, to, I think it was about the 18th of June, in 1945.

Q. Were you on Voyage No. 13 of the Hawaiian Shipper? A. Yes.

Q. And also on Voyage 14?

A. I think I was 14, too.

Q. Voyage 13 started in December of 1944, did it not?

A. Yes. [1358] December 11th I signed articles.

Q. The 11th you were in port here in San Francisco?

A. I signed the articles on the 11th.

Q. Do you know on what date the ship left port, here? A. It was about the 17th or 18th.

Q. 17th or 18th of December? A. Yes.

Q. What was your position on the boat?

A. Chief baker.

Q. Did you have a helper or assistant as chief baker on the boat. A. I had a helper.

Q. He is called a scullion, isn't he?

A. Well, he was washing up the pots and pans.

Q. Isn't that what they call it?

A. Scullion.

Q. Scullion. Do you recall how many there were on that boat for whom you had to do the baking?

A. I don't know how many there was altogether. We had officers going on the ship and, I don't know, I had a crew, and I had troop officers when I had passengers.

Q. Then you had the officers of the ship?

A. The officers of the ship.

(Testimony of Sture Oscarsson.)

Q. And the crew of the ship?

A. Yes, and the sick.

Q. The what?

A. The wounded soldiers in the hospital.

Q. Whoever was in the hospital were also served by you, as far as baking is concerned?

A. Yes.

Q. Did you have anything to do with baking for the troops on board?

A. For the troop officers. [1359].

Q. Only the troop officers.

A. And the men who was, who had broken arms or legs, who was in the hospital.

Q. How about the gun crew? There was a Naval gun crew on board, was there not?

A. Yes. I had them, too.

Q. How many, altogether, did you have to bake for on that voyage?

The Court: About how many?

Mr. Pratt: Q. About how many?

A. The crew consisting about 150, another 150 to 200 of officers, which would be about 350 altogether.

Q. Altogether. You had a separate bake shop on the boat, did you, separate from the galley where the ordinary cooking was done? A. Yes.

Q. In that work did you have occasion to use eggs in your baking? A. Every day.

Q. Every day. When you needed eggs how did you get them?

A. I made out a requisition every morning to

(Testimony of Sture Oscarsson.)

the storekeeper on the ship and my scullion went down and brought them up to the bake shop.

Q. The scullion went down and got them?

A. From the bake shop, to the bake shop from the stores.

Q. From the stores?

A. From the stores down there.

Q. When you speak of the storeroom does that mean the chill box?

A. Chill box and my own provisions came from the storekeeper, where he had them. I had my provisions from the storekeeper, [1360] but it come from the chill room.

Q. Did you have occasion to go to that chill room during the voyage?

A. I used to be down there about once or twice a day.

Q. How often each day was the chill room open?

A. It was not opened more than like about—wouldn't be open more than three times a day.

Q. On every day you had occasion to go at least once, did you, to the chill room?

A. Well, once I used to go in there.

Q. During the course of this voyage then you were actually in the chill room almost every day, or every day?

A. Well, I would say every second day, anyway.

Q. What was the condition of the chill room?

A. We had a good chill room and iceboxes in that ship, the best ones I ever see.

Q. It was a large chill room?

(Testimony of Sture Oscarsson.)

A. Very large.

Q. Can you give any idea of the dimensions of that chill room?

A. I would say about half as big as this court-room, but not so high.

Q. How high was it, about?

A. I would say about, oh, three or four feet—well, about ten feet, nine or ten feet.

Q. It had cooling coils, I suppose, around it?

A. Yes.

Q. I want to know whether the box, or the room, during that voyage was kept clean?

A. Yes, that is kept clean.

Q. How about the temperature, was it kept at an even temperature? [1361]

A. We had reefer engineer who watched that every hour.

Q. Every hour. There were a lot of stores in this chill box, chill room, besides eggs, weren't there? A. Yes.

Q. Stores that would feed a couple of thousand or more people during a rather long trip?

A. Yes.

Q. Do you recall sending a requisition for eggs down to the storekeeper to be brought from the chill room early in that voyage?

A. Well, I sent down every day for some.

Q. Every day. Do you remember any occasion where you particularly examined the eggs?

A. I examined them all the time when I opened them.

(Testimony of Sture Oscarsson.)

Q. When you used eggs in your bake shop do you, personally, use them, personally break them?

A. Yes. At sometimes I told my helper to break, maybe, twenty eggs or so.

The Court: When was this, the day you sailed, or the day after, or a week after?

A. The day we sailed, well, when we were out a couple of days I had some eggs that were so bad so then from that day on I never let him break any more eggs.

Mr. Faulkner: I make the same objection to this testimony as I made to Mr. Debes'.

The Court: Fix the time and place.

Mr. Pratt: Q. What you are speaking of now, is right after the voyage started?

The Court: Objection overruled. [1362]

Mr. Faulkner: Q. Was there a ruling, your Honor?

The Court: Objection overruled.

Mr. Faulkner: The last answer may go out until the time and place is fixed?

The Court: Yes. Fix the time and place. The testimony is so general, he is speaking in generalities.

Mr. Pratt: Q. Immediately after the voyage started, I will ask you if you found in breaking eggs that there was anything the matter with them?

A. Yes. I think it was two days after we left.

Q. What did you discover?

A. Oh, there was so many rotten eggs I couldn't use them.

(Testimony of Sture Oscarsson.)

Q. When the cases of eggs came to you, how many came at a time? A. One case.

Q. One case. On the occasion you are speaking of, two or three days after the voyage started, tell just what you did when that case of eggs came to your bakeshop? A. I got a case of eggs——

Mr. Faulkner: The same objection to this as made to Mr. Debes' testimony, on the same subject.

The Court: Overruled.

Mr. Faulkner: Exception. [1283]

The Court: You may answer. What happened on that day?

Mr. Pratt: Q. What happened?

A. I got a case of eggs up.

The Court: Q. Who got it up? You?

A. No, my helper.

Q. What time of day was this about?

A. It was nine o'clock in the morning.

Q. This was on the second or third day after you got out?

A. I think it was the second day out.

Q. All right. Tell this Jury what occurred at that time and place.

A. I opened that case. He couldn't break some eggs because he was busy carrying up stores, and I started to break a couple of eggs, and three or four were rotten right away. So I tried a few more again, and they wasn't so good. So finally we had some small regular soup bowls, like they have on shore here for soup, so I got some of them, three or four, and I started to break one at a time. When

(Testimony of Sture Oscarsson.)

we break them, it is too much trouble to do that, but I had to do it, so I started to break one or two eggs.

Mr. Pratt: Q. Previously had you broken a lot of them in one bowl? A. Yes.

Q. And what happened then when you did that on that occasion?

A. Well, I got too many rotten—the first egg I broke was rotten, see? And then I broke another one. Not so good. And then I broke another one. It was rotten. And then I had to get those bowls. And then I called the chief steward down. [1364] Mr. Debes.

Q. And you showed him the eggs?

A. I told him why—

Q. Never mind what you told him, Mr. Oscarsson. What did you do? A. I say look at—

Q. What did you do and what did he do?

A. He looked at them and we broke some more. I think while he was there we broke about a dozen. He said, "I don't know what to do. You try to do the best of it."

Q. What did you do then?

A. I had to keep breaking them individual, one at a time, and I get—in some layer I didn't get more than three or four out of a layer, and out of some layers I get as high as ten.

Q. How many are in a layer?

A. There is three dozen in a layer.

Q. Go ahead?

A. And some layers were good, mostly the top

(Testimony of Sture Oscarsson.)

layers looked better than the bottom layer. And it seemed to me it was a much bigger egg on the top than there was on the bottom. There were these small small eggs.

Q. This is the first case you are talking about; the case you got on the second or third day, that you were out? A. Yes.

Q. Just continue. What happened with the rest of these eggs?

A. I went in and I saw the chief cook about it. I asked him in the galley if he——

Q. Never mind what you said. Just leave that out.

A. Anyway I will explain it. He said, "I don't know what to do with [1365] those eggs," he say. We kept going this way. The steward said, "I can't help it."

Q. Did you send for some more eggs? Did you send for another case?

A. We had to use more eggs, so some days we used two cases of eggs a day because I throw so many away.

Q. Ordinarily how many cases of eggs would you use in a day?

A. Well, some days I don't use hardly one, and some days I use nearly up to two.

Q. On this occasion how many cases did you have to use in order to get enough eggs to serve your purposes? A. About two or more.

Q. How long did that continue on this voyage, Mr. Oscarsson?

(Testimony of Sture Oscarsson.)

A. Well, during the whole way.

Mr. Faulkner: In other words, that question is too general, How long what? The time he used two eggs for one?

Mr. Pratte: I will withdraw that question.

Q. Will you describe further what these eggs looked like, the ones you have spoken of as being rotten?

A. Well, I broke some and they were coal black inside.

Q. What?

A. Some of them were coal black inside.

Q. Some of them were coal black inside?

A. Just like water when you broke them, and they smelled so bad you couldn't even stand close to them, and some, they didn't smell so bad, they were bloody, and the yolks were all watery in some of them, and just bloody egg yolks. I put my finger on many. Only was much [1366] harder than an other egg yolk. And then on some eggs I get the white layer was watery, but on the shell there was just like yellow inside of the shell where the white was stuck.

Q. Stuck to the shell?

A. And many times on the egg shell was a piece it was some blood and some yolk right where the shell was.

Q. Some yolk with the shell? A. Yes.

Q. Did you find in any of these cases there were eggs missing?

(Testimony of Sture Oscarsson.)

A. Yes, in some cases. I found as high as two layers missing in some cases.

Q. Two layers in a case? A. In a case.

Q. During this voyage how many cases of eggs did you bring into your bakeshop?

A. About 60.

Mr. Faulkner: The same objection to all of this testimony, your Honor.

The Court: The objection will be overruled.

A. About 60, 65, I guess.

Mr. Pratt: Q. The circumstances that you have described about the second or third day of the voyage, I will ask you if those conditions or those experiences were repeated at any time during the trip? Did you find the same situation at any other time? A. The whole trip.

Q. Of the first case of eggs that you have spoken of on the second or third day, of the 30 dozen eggs in the case, how many were you able to use in baking?

A. Well, I used a little too [1367] many where I shouldn't use because I had to. I didn't want to throw too many away, when it was all right to eat, and so I could use more than if like I had fried them, so I used quite a few bum eggs in my baking. I should say I used about two-thirds of the eggs.

Q. You used about two-thirds of them?

A. Yes.

Q. In cases where you found eggs missing will you describe that situation?

A. I found in the middle of cases and sometimes

(Testimony of Sture Oscarsson.)

there was a layer missing in both sides. In some cases there was one layer missing on one side. In some cases there was six or seven to a dozen eggs missing in the top layer.

Q. In how many cases of eggs that you examined during that voyage did you find missing eggs?

Mr. Faulkner: Same objection, your Honor.

The Court: The objection will be overruled.

Mr. Faulkner: In other words, your Honor, that would mean that a seller of eggs was an insurer of those eggs from the time he touched them until they were consumed. In other words, we have a voyage of months, fifteen hundred people on board a ship, and we are supposed to defend on whether eggs were taken out of a case. It just is not material. It is not competent evidence. It is not a charge in the indictment. Of the thousands of people who were on that vessel, many, many people had access to the ice box.

Mr. Pratt: Now, that is not in evidence at all, many, many [1368] people.

Mr. Faulkner: The Army had access to that ice box.

Mr. Pratt: No, they did not.

Mr. Faulkner: You just had the witness testify that the goods went into the ice box to feed fourteen hundred people, and this man was merely the baker.

The Court: That goes to the weight of the testimony. That is for the Jury to determine. The objection will be overruled.

(Testimony of Sture Oscarsson.)

Mr. Faulkner: Exception, your Honor.

The Court: Read the question.

(Last question read.)

A. Oh, about every four or five case.

Mr. Pratt: Q. When you had to reject eggs because of their condition you then threw them away, put them in the garbage, did you?

A. Yes.

Q. What odor, if any, was there that came from those eggs? Was there any odor?

A. Oh, yes, there was plenty odor. One egg was enough to smell up the whole bakeshop. The boy used to take it like this (indicating) and carry it out. Only one egg.

Q. When the eggs came to your bakeshop they came in the case, did they not? A. Yes.

Q. Was the top on them when they came to you?

A. Yes.

Q. Who removed the top?

A. I did mostly.

Q. Did you find anything unusual in connection with the top? [1369]

Mr. Faulkner: We object to that as calling for an opinion and conclusion of the witness.

Mr. Pratt: Q. What condition did you find the top in in those cases that you uncovered?

Mr. Faulkner: Same objection.

A. All right.

The Court: "All right." He said the top was all right.

(Testimony of Sture Oscarsson.)

Mr. Faulkner: The answer is not what I am afraid of when I object.

The Court: The answer may go out.

Mr. Pratt: I think that is all.

Cross Examination

Mr. Faulkner: Q. Mr. Oscarsson, you have been at sea for thirty years? A. Yes sir.

Q. And a cook for how long?

A. I started to cook right away.

Q. Right away? A. Yes.

Q. And you have been at it ever since?

A. Yes.

Q. How long have you been with the Matson Company?

A. I have only been two ships with the Matson Company.

Q. Two trips?

A. No two ships. I was one year and four days on a ship, the Waipio.

Q. How long a time, Mr. Oscarsson?

A. One year and four days.

Q. Altogether on four ships?

A. One I was on eighteen months.

Q. You have been with the Matson Company practically——

A. Two and a half years. [1370]

Q. Two and a half years, is that right?

A. Yes.

Q. Almost three years. You remember the 13th voyage of the ship Hawaiian Shipper?

(Testimony of Sture Oscarsson.)

A. Yes.

Q. You were the chief baker? A. Yes.

Q. How many men were in your department?

A. How many men were in the ship?

Q. Yes. How many men worked under your direction? A. Only one.

Q. Just one? A. Yes.

Q. You did all the baking? A. Yes.

Q. With your assistant?

A. I didn't do no bread. The troops did the bread, but all the pastry I did.

Q. As I understoood——

The Court: He was a pastry cook.

Q. Were you the pastry cook?

A. Yes, I took care of the pastry.

Q. You were the fellow who used the eggs for the pastry? A. Yes, pastry baker.

Mr. Faulkner: Q. You merely cooked for the officers and the crew of the ship and the gun crew?

A. The officers of the ship, the two passenger officers, the sick in the hospital, and the gun crew, and the merchant crew. [1371]

Q. And altogether you cooked for about 350 people?

A. I guess it would be about that.

Q. Is that correct? A. Yes, the highest.

Q. And there were on board the vessel about how many people, altogether?

A. In the whole ship?

Q. Yes.

(Testimony of Sture Oscarsson.)

A. I don't remember how many was that voyage, but I think we carried about 2700 altogether.

Q. Who did the cooking?

A. Troop carrier, I mean.

Q. Who was the baker and cook for the other 2350?

A. We had Army cooks for the regular troops. There was Army personnel.

Q. Were all the ship's stores used for the cooking for the men that you acted as bakery cook for and all the soldiers in this room that you have described? A. I didn't understood that.

Q. In other words, there was a chill room or a cold storage room on the vessel? A. Yes, sir.

Q. You said it was a very good one.

A. Yes.

Q. You had been in it many times, had you?

A. Yes.

Q. It was half the size of this room and about ten feet high? Now, were all the foodstuffs used for the feeding of that vessel in that container, in that chill room?

A. No, sir, not all. We had four boxes—we had three more boxes big like that, nearly as big, and then we had two more boxes up on another deck.

Q. Now, in all those boxes there were large quantities of foodstuffs, isn't that right?

A. Yes, sir. [1372]

Q. You have been in them all, haven't you?

A. Yes, sir.